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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October 1984 Term

STATE OF NORTH CAROLINA, in relationship with JOHN C. GRIER, JR.;

Petitioner

v.

BOARD OF COMMISSIONERS FOR MOORE COUNTY et al.;

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Respondents respectfully move this Court for the entry of an ORDER denying the Petition for Writ of Certiorari filed herein by the Petitoner. This motion is made pursuant to Rule 22, Rules of the United States Supreme Court and is based upon all documents of record and the following argument.

QUESTION PRESENTED

I. Whether the United States Court of Appeals for the Fourth Circuit correctly affirmed the District Court's Order of Dismissal of Petitioner's 42 U.S.C. §1983 claim for failure to state a claim upon which relief could be granted.

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STATEMENT OF THE CASE

Statement of Proceedings and Nature of the Case.

The Petitioner, John C. Grier, Jr., M.D. (hereinafter called "Dr. Grier"), filed a complaint in the United States District Court, Middle District of North Carolina, for damages pursuant to 42 U.S.C. §1983, and 42 U.S.C. §1985, and seven causes of action based upon pendent state law remedies. The Defendants include County of Moore, Board of Commissioners for Moore County, Lee Williams, former Chairman of said Board, Carl W. Sellers, former Delinquent Tax Collector for Moore County, Don A. Richardson, former Tax Collector for Moore County, Jerome L. Whipple, former Sheriff of Moore County, and also the surety on the official bonds for various defendants.

All Defendants with the exception of former Sheriff Jerome L. Whipple, who failed to answer, filed a Motion to Dismiss pursuant to Rule 12 (b)(6), Federal Rules of Civil Procedure.

In an Opinion and Order filed December 19, 1983, the Honorable H. Ward, United States District Court Judge, dismissed the complaint pursuant to Rule 12 (b)(6), Federal Rules of Civil Procedure, without a hearing. In the Opinion Judge Ward held that the Complaint should be dismissed as to the First Cause relating to 42 U.S.C. §1983, in that the State of North Carolina provided Plaintiff with a Constitutionally adequate avenue to redress the deprivation of his property.

Judge Ward also dismissed the Second Cause of Action founded upon 42 U.S.C. §1985(3), in that Plaintiff did not

allege that any of Defendants' actions were motivated by racial, religous, national origin, or other invidiously discriminatory intent.

Since all other causes of action were pendent state claims, the subject matter did not survive the Federal Rules of Civil Procedure 12(b)(6) Motion. All state claims were dismissed without prejudice.(Pet A1-9)

On appeal to the United States Court of Appeals for the Fourth Circuit, the Circuit Court affirmed the Judgment of the District Court dismissing Petitioner's claim.(Pet A21)

Statement of Facts

Golf Investors, Inc. a North Carolina corporation, was the owner and operator of a golf course and club house

known as Holly Hills Golf Course and Holly Hills Golf Club.(Pet A26) This golf course was operated in the Pinebluff area of Moore County, not in the Pinehurst area as referred to in Appellant's brief at page three.

Prior to June of 1980, Dr. Grier, apparently the major shareholder of Golf Investors, Inc., and Golf Investors, Inc. stubbornly failed and refused to pay personal and real property taxes owing Moore County for the years 1976, 1977, 1978, and 1979.(Pet A26) This refusal continued and in June of 1980 Carl W. Sellers, who had been appointed delinquent tax collector for Moore County, pursuant to the required general order of the Moore County Board of Commissioners (See North Carolina General Statutes §105-321) levied on certain

property of Golf Investors, Inc. (Pet A26,28)

Such levy was made after Plaintiff had been notified on May 27, 1980 of the anticipated levy and seizure.(Pet A26) Payment was not attempted at this time, although clearly Dr. Grier could have easily paid out of personal funds which he subsequently did upon a threatened levy and seizure of the real property. (Pet A26) Sellers seized items of personal property in the Clubhouse and maintenance shed, padlocking and placing "no trespassing signs" on those buildings pursuant to North Carolina General Statutes §105-366 and 105-367. (Pet A28) At no point was the golf course itself seized.

Because the golf course itself was never seized, and since everything seized was in the nature of golf equipment,

metal sprinkler heads or golf carts, nothing perishable was seized.

Dr. Grier was apparently informed immediately after the seizure and attempted to contact officials of Moore County regarding the seizure. Dr. Grier contacted various officials, seeking not to determine how he could pay the taxes, but to inform officials of his need to obtain access to the maintenance shed to obtain watering heads for the sprinkler system.(Pet A29) The Moore County officials related only that it was a lawful levy. (Pet A30) These calls continued, yet it seems that Dr. Grier made no attempts to simply purchase a small number of sprinkler heads to maintain the golf course, or borrow watering heads from other golf courses in the county.

Following the procedure set forth in the North Carolina General Statutes, certain property was sold in June 19, 1980, and other property at a later time. After the sale, Plaintiff's complaint alleges the Plaintiff discovered that the clubhouse had been "broken into" and that property kept in the building -golf balls, golfing apparel, and snack shop appliances-had been "stolen". (Pet A 30,31)

Suffering from a serious misapprenhension of the law, Dr. Grier alleged that Respondent Sellers committed the "burglary".(Petitioner's Brief Page 16) At the time at which the items of personal property were purportedly stolen, the personal property had been seized and was in the legal possession of Defendant Sellers.

At last, Dr. Grier paid the delinquent taxes. Subsequently the golf course was sold in October of 1980, and Dr. Grier retained these alleged causes of action . (Pet A23)

ARGUMENT

THE COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY CLASSIFIED PETITIONER'S CLAIM AS A PROCEDURAL DUE PROCESS CLAIM WITHIN THE PURVIEW OF PARRATT V. TAYLOR, 451 U.S. 527 (1981) AND INADEQUATE TO STATE A CLAIM UNDER 42 U.S.C. §1983, SINCE THE STATE OF NORTH CAROLINA PROVIDES PLAINTIFF WITH AN ADEQUATE REMEDY AT LAW TO REDRESS THE ALLEGE DEPRIVATION OF PROPERTY.

Plaintiff alleges violation of §1983 of Title 42 of the United States Code

which authorizes a civil action for the deprivation of property without due process in violation of the Fourteenth Amendment. In his complaint Dr. Grier alleges that Sellers deprived Grier of property without due process of law by seizing property not designated in the Notice of Levy and allowing the golf course to fall into disrepair. Grier made numerous allegations in his lengthy complaint, but in sum he contended that the Defendants had deprived him of property by intentionally violating North Carolina State Levy Procedures. Tacked onto this §1983 claim were a series of additional claims based on state law causes of action for trespass, conversion, negligence and fraud.

The District Court dismissed Grier's suit for failure to state a claim upon which relief could be granted. The Court

reasoned that because an adequate remedy was available at state law, Grier had failed to establish a violation of due process. Parratt v. Taylor, 451 U.S. 527 (1981).

In its opinion affirming the District Court's Order of Dismissal of Petitioner's claim, the Fourth Circuit also relies upon Parratt which states:

> The Fourteenth Amendment protects only against deprivations "without due process of law." Baker v. McCollan, [443 U.S. 137, 145, 99 S.Ct. 2689, _____, 61, L.Ed. 2d 433, 442 (1979)]. Our inquiry therefore must focus on whether the [Plaintiff] has suffered a deprivation of property without due process of law. In particular, [the Court] must decide whether the tort remedies which the State of [North Carolina] provides as a means of redress for property deprivations satisfy the requirements of procedural due process...the existance of an adequate state remedy to redress property damage inflicted by state officers avoids the conclusion that there has been any Constitional deprivation of property without due process. Parratt v. Taylor 451 U.S. 527, 537, (1981).

There is no dispute over the availability of adequate state remedies for the alleged wrong doing. The Honorable Judge Ward in his District Court Opinion pointed out that Petitioner's seven state claims of the complaint (causes of action three through nine) indicate that the opportunity to be heard in the courts of North Carolina was no secret to Dr. Grier. (Pet A7).

Thus, if Parratt controls, as both the District and Circuit Courts hold it does, Petitioner's complaint fails to state a claim for which relief can be granted, and was properly dismissed by Judge Ward. Petitioner contends that Parratt is inapplicable to the case at bar and sets forth three arguments in support of this contention. At the risk

of belaboring the issues, and to reiterate Petitioner's contentions, Grier first sought to distinguish Parratt from the case at hand by insisting that the element that was so critical in Parratt, the randomness of the challenged act, is not present her. Grier alleged that the conduct complained of on Sellers' part was in effect the "custom, policy or established procedure of the county" and controlled by Monell vs. The Deparment of Social Services of the City of New York, 436 U.S. 658 (1978), where the Court held that a §1983 suit can be brought against a municipality provided the alleged violation is a result of a municipal "policy statement, ordinance, regulation, decision, or 'governmental custom'". As the Circuit Court pointed out, however, one episode of wrong doing, as here, no matter how egregious, is

insufficient to create a governmental custom or policy. (Pet A 16) No interpretation of the facts could lead to the conclusion that this one incident of levying on Petitioner's property, whether authorized or not, amounts to an established policy or custom.

Grier's other arguments are equally void of reasoning. Primarily, Petitioner argues that Parratt is inapplicable because the deprivation of property violated his substantive due process rights, as well as his procedural due process rights,and that substantive due process claims are outside the scope of Parratt. The Circuit Court agreed with petitioner that, if in fact his allegations involved a violation of his Fourteenth Amendment substantive due process rights, then Parratt is inapplicable and Petitioner may have a

claim that can survive a 12 (b)(6) motion. The Circuit Court relied upon Schiller v. Strangis, 540 F. Supp. 605 (D. Mass. 1982) to illustrate the difference between procedural and substantive due process claims. (Pet A 17, 18) In that case, Judge Keeton summarizes the distinction as follows:

> Under "procedural due process", the claimant is alleging that the state has unlawfully interfered with a protected liberty or property interest by failing to provide adequate procedural safeguards. The claim is that the procedures used by the state in effecting the deprivation of property or liberty were inadequate in light of the significance of the affected interest. The Constitutional violation is established by proving a "property" or "liberty" interest, proving a "deprivation" of that interest "without due process of law," and proving that the deprivation occurred "under color of state law." See, e.g., Parratt v. Taylor, 451 U.S. 527, 536-37, 101 S.Ct. 1908, 1913-14, 68 L.Ed. 2d 420 (1981); Ingram v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 1413, 51 L.Ed. 2d 711 (1977). Distinguishable from "procedural due process" claims, are those claims that have been analyzed

> under the rubric of "substantive due process." "Substantive due process" cases have held that althought no specific provision of the Bill of Rights has been violated, the state's conduct was such as to "shock the conscience" of the court and, therefore, to violate the due process clause. Rochin v. California, 342 U.S. 165, 172, 72 S.Ct. 205, 209, 96 L.Ed. 1983 (1972). See Hall v. Tawney, 621 F.2d at 607 (corporal punishment in public school); Johnson v. Glick, 481 F.2d 1028, 1032-33 (2d Cir.) (unprovoked attacked by jail guard on pre-trial detainee), cert. denied sub nom. John v. Johnson, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed. 2d 32 (1973). A "substantive due process" claim is, fundamentally, not a claim of procedural deficiency, but, rather, a claim that the state's conduct is inherently impermissible.

540 F Supp at 613-14. The Fourth Circuit discusses the evidentiary standards regarding substantive due process claims. (Pet A 18,19) Substantive due process claims need not always involve wrong doings that "shock the conscience". The Supreme Court has held that conduct which violates a very select group of

"fundamental rights" protected under the liberty clause of the Fourteenth Amendment may also form the basis for a substantive due process claim. These fundamental rights which have been singled out for special protection include the right to abortion, Roe v. Wade, 410 U.S. 113(1973); the right to travel, Shapiro v. Thompson, 394 U.S. 618(1967); and the right to privacy, Griswold v. Connecticut, 381 U.S. 479 (1965).

The fact remains, as the Fourth Circuit holds, that Grier's allegations-even if true- do not support a substantive due process claim. First, Grier has not alleged one of the list of enumerated fundamental rights. In fact, it remains unclear what specific interest Petitioner alleges. Also, the Court says that the wrongdoing alleged by Grier

falls far short of the conduct that shocks the conscience. The Court states, "levying on the wrong property is not to be condoned, but given that Golf Investors (Grier) had persistently refused to pay its taxes, we are hard pressed to conclude that the county's technical violations of state law, if true, were in any way shocking". (Pet A 20)

In his petition for Writ of Certiorari, Grier now contends, notably for the first time in all the pleadings, that the Fourth Circuit should have considered all of Grier's allegations, taken together, and not only the allegation of improper levy, to decide whether the alleged misconduct was so outrageous as to amount to a substantive due process violation. This reasoning is entirely specious, however, since Grier's

other allegations have no basis in law, and even under the most favorable interpretation do not support any legal claim.

Grier's complaint alleges improper levy on perishable property, burglary, criminal trespass, conversion, larceny and fraud in addition to his allegations that Defendant Sellers levied improperly on maintenance shed property. Complaint 36-48.

Grier alleges improper levy on perishable property, yet it is agreed that at no time was the golf course itself seized. In fact, Grier does not even allege that the golf course itself was seized, merely that non perishable property, such as the clubhouse, maintenance shed and some golf carts were seized.

The trespass and conversion claims are unfounded as well. As Judge Ward points out, trespass is the unauthorized entry of land of another. Keziah v. Seaboard Airline R. Company, 272 N.C. 299, 158 S.E. 2d 539 (1968). Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another. Gallimore v. Sink, 27 N.C. App. 65, 218 S.E. 2d 181(1975). Sellers' entry on the land and seizure of property was indeed authorized by an order from the Board of Commissioners for Moore County issued pursuant to N.C. General Statutes 105-321 (A1); hence, Grier's allegations of trespass and conversion are baseless.

As for Grier's allegations of burglary and larceny, what is the possible legal basis for such claim,

since the property at the time was in the custody of the county government? Burglary is the breaking and entering the house (emphasis mine) of another in the nighttime (emphasis mine), with intent to committ a felony therein. State v. Allen, 186 N.C. 302, 119 S.E. 504, 506. No fact supports such a claim. In fact, the alleged entry by Sellers was not alleged to have been made during the nighttime and was not made into a house. Furthermore, the clubhouse and maintenance shed were already under the control and in the custody of Sellers at the time of the supposed "burglary".

The same rationale applies to Grier's allegations of larceny. Larceny is the wrongful and fraudulent taking away by one of personal goods of another without his consent and against his will with intent to convert to use of the

taker. State v. Boswell, 195 N.C. 496, 142, S.E. 583, 584. How could Sellers possibly commit larceny when the goods taken away from the clubhouse were then in his custody? Such nonsensical, ludicrous allegations of Dr. Grier apparently are made without any understanding of law.

Even if the Fourth Circuit had considered all of Grier's allegations together in deciding whether the alleged misconduct passed into the realm of a substantive due process violation, the conclusion that no substantive due process claim exists would have been the same. Just as one hundred zeros do not add up to one hundred, a half dozen baseless allegations of misconduct do not add up to one substantive due process claim. The Fourth Circuit properly refuted Grier's contention that his

complaint amounted to a substantive due process claim outside the scope of Parratt. The Fourth Circuit was correct in following the majority decision of Parratt and holding that Grier's §1983 claim fails to state a claim upon which relief can be granted, since adequate state remedies were available to Grier in North Carolina state courts.

CONCLUSION

The Fourth Circuit Court of Appeals ruling in this case is plainly correct and does not merit the Supreme Court's review. Indeed, Petitioner's argument-that the alleged misconduct of Sellers constitutes a violation of Petitioner's substantive due process rights- leads to the wholly implausible conclusion that almost every alleged

injury which may have been inflicted by a state official acting under "color of law" is a violation of the Fourteenth Amendment cognizable under §1983.

It is therefore respectfully submitted that the Petition for a Writ of Certiorari should be denied.

ADDENDUM

North Carolina General Statutes §105-321

North Carolina General Statutes §105-366

North Carolina General Statutes §105-367

STATUTES

§105-321. Disposition of tax records and receipts; order of collection.--

(a) County tax records shall be filed in the office of the tax supervisor unless the board of county commissioners shall require them to be filed in some other public office of the county. City and town tax records shall be filed in some public office of the municipality designated by the governing body of the city or town. In the discretion of the governing body, a duplicate copy of the tax records may be delivered to the tax collector at the time he is charged with the collection of taxes.

(b) Before delivering the tax receipts to the tax collector in any year, the board of county commissioners or municipal body shall adopt and enter in its minutes an order directing the tax

collector to collect the taxes charged in the tax records and receipts. A copy of this order shall be delivered to the tax collector at the time the tax receipts are delivered to him, but the failure to do so shall not affect the tax collector's rights and duties to employ the means of collecting taxes provided by this Subchapter. The order of collection shall have the force and effect of a judgment and execution against the taxpayers' real and personal property and shall be drawn in substantially the following form:

State of North Carolina

County(or City or Town) of.....

To the Tax Collector of the County of ...

.....

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the

office of ..... and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County of....., and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this ..... day of ....., 19...

.....(Seal)
Chairman Board of Commissioners of
.....(County)
(Mayor, City or Town) of.....

Attest:

.....

Clerk of Board of Commissioners of..... County Clerk of the City or Town of .....

(c) The origianl tax receipts, together with any duplicate copies that may have been prepared, shall be delivered to the tax collector by the governing body on or before the first day of September each year if the tax collector has made settlement required by G.S. 105-352. The tax collector shall give his receipt or the tax receipts and duplicates delivered to him for collection.

(d) No tax receipt shall be delivered to the tax collector for any assessment appealed to the Property Tax Commission until such appeal has been finally

adjudicated. (1939, c.310,s. 1103; 1971, c.806, s.1; 1973, c.476, s.193; c.615).

§105-366. Remedies against personal property.--

(a) Authority to Proceed against Personal Property; Relation between Remedies against Personal Property and Remedies against Real Property.- All tax collectors shall have authority to proceed against personal property to enforce the collection of taxes as provided in this section and in G.S. 105-367 and 105-368. Any tax collector may, in his discretion, proceed first against personal property before employing the remedies for enforcing the lien for taxes against real property, and he shall proceed first against personal property.

(1) When directed to do so by the governing body of the taxing unit; or

(2) When requested to do so by the taxpayer or by a mortgagee or other person holding a lien upon the real property subject to the lien for taxes written statement describing the personal property to be proceeded against and giving its location.

No sale of a tax lien or foreclosure of a tax lien on real property may be attacked as invalid on the ground that payment of the tax should have been procured from personal property.

(b) Remedies after Taxes Are Due.- At any time after taxes are due and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a judgment for taxes under G.S. 105-375, and subject to the provisions of G.S. 105-356 governing the priority of liens,

the tax collector may levy upon and sell or attach the following property for failure to pay taxes:

(1) Any personal property owned by the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon.

(2) Any personal property transferred by the taxpayer to a relative (which shall mean any parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, or their spouses, of the taxpayer or his spouse).

(3) Personal property in the hands or a receiver for the taxpayer. (It shall not be necessary for the tax collector to apply for an order of the court directing payment or authorizing the levy or attachment, but he may proceed as though

the property were not in the hands of the receiver, and the tax collector's filing of a claim in the receivership proceeding shall not preclude him from proceeding to levy under G.S. 105-367 or to attach under G.S. 105-368.)

(4) Personal property of a deceased taxpayer if the levy or attachment is made before final settlement of the estate.

(5) The stock of goods or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee or such property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or transfer, but in such a case the levy or attachemnt must be

made within six months of the sale or transfer.

(6) Personal property of the taxpayer that has been repossessed by on having a security interest therein so long as the property remains in the hands of the person who has repossessed it or the person to whom it has been transferred other than by bona fide sale for value.

(7) Personal property due the taxpayer or to become due to him within the calendar year.

(8) Personal property of a partner in satisfaction of taxes on partnership property, but only after the tax collector:

(a) Has sold the taxing unit's lien for taxes against the partnership real property, if any; and

(b) Exhausted the partnership's personal property through the use of levy and attachment and garnishment; and

(c) Exercised the authority granted him by G.S. 105-364 in an effort to collect the tax due on the partnership's property.

(9) Personal property transferred by the taxpayer by any type of transfer other than those mentioned in this subsection (b) and other than by bona fide sale for value if the levy or attachment is made within six months of the transfer.

(c) Remedies Before Taxes Are Due.- If between the date as of which property is to be listed and the first day of September of the fiscal year for which the taxes are imposed the tax collector has reasonable grounds for believing that

the taxpayer is about to remove his property from the taxing unit or transfer it to another person or is in imminent danger of becoming insolvent, the tax collector may levy or attach that property or any other personal property of the taxpayer, in the manner provided in G.S. 105-367 and 105-368, prior to the first day of September for the taxes to become due on that date. When collected under this subsection (c), the amount of taxes not yet determined shall be computed under the provisions of G.S. 105-359, and any applicable discount shall be allowed.

(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale or Retail Merchants.--

(1) Any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) who sells or transfers the major

part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business or who goes out of business, shall:

(a) At least 48 hours prior to the date of the pending sal, transfer, or termination of business, give notice thereof to the tax supervisors and tax collectors of the taxing units in which his business is located; and

(b) Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) is sold or transferred, other than in the ordinary

course of business, or who becomes the successor in business of a wholesale or retail merchant shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calenar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes required by this subsection (d) and the taxes remain unpaid after the 30 day period allowed, he shall be personally liable for the amount of the taxes unpaid, and his liability may be enforced by means of a civil action brought in the name of the

taxing unit against him in an appropriate trial division of the General Court of Justict in the county in which the taxing unit is located.

(3) Whenever any wholesale or retail merchant(as defined in Schedule E of the Revenue Act) sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business, and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may:

(a) Levy on or attach any personal property of the seller;or

(b) If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or

attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this subsection (d), the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed. (1939, c.310, s.1713; 1951, c.1141, s.1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s.1; 1971, c. 806, s. 1; 1973, c. 564, s.1.).

§105-367. Procedure for levy.-

(a) The levy upon the sale of tangible personal property for tax collection

purposes (including levy and sale fees) shall be governed by the laws regulating levy and sale execution except as otherwise provided in this section.

(b) The tax collector or any duly appointed deputy tax collector shall make the levy and conduct the sale; it shall not be necessary for ther sheriff to make the levy or conduct the sale. However, upon the authorization of the governing body of the taxing unit, the tax collector may direct an execution against personal property for taxes to the sheriff in the case of county or municipal taxes or to a municipal policeman in the case of municipal taxes. In either case the officer to whom the execution is directed shall proceed to levy on and sell the personal property subject to levy in the manner and with the powers and authority normally

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execised by sheriffs in levying and selling personal property under execution.

(c) In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the tax collector may advertise the sale in any reasonable manner, and for any reasonable period of time he deems necessary to produce an adequate bid for the property. The taxing unit shall advance the cost of all advertising.

(d) Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes. The advertising costs, when collected, shall be used to reimburse the taxing unit for advertising costs it had advanced. Levy and sale fees, when collected, shall be treated in the same manner as other fees received by the

collecting official. (1939, c.310, s. 17131 1951, c.1141, s.1; 1955, cc. 1263, 1264; 1957, c.1414, ss.2-4; 1969, c.1029, s. 1; 1971, c. 806, s.1.:

CERTIFICATE OF SERVICE

This is to certify that on the 25th day of January, 1985, service of the foregoing Brief In Opposition To Petition For Writ Of Certiorari filed in the above entitled action was had upon Donald T. Bogan, Graham, Cooke, Miles & Bogan, Post Office Box 1829, Greensboro, North Carolina 27402, by depositing in the United States Mail, postage prepaid, a properly addressed envelope containing a copy of said Brief In Opposition To Peition For Certiorari.

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